

IN THE UNITED STATES DISTRICT COURT
CLERK, U.S. DIST. FOR THE EASTERN DISTRICT
RECEIVED TYLER DIVISION
EX PARTE MOTION AUG 06 2018 } } CV No.: 6:18cv394
OF } }
NICHOLAS LEE BLAIR } }

MOTION FOR EMERGENCY INJUNCTIVE RELIEF
IN RESPONSE TO MEDICAL INDIFFERENCE AND LETHAL MEDICAL THREAT

Movant, NICHOLAS LEE BLAIR, respectfully requests that this Court provide an emergency injunction to the University of Texas Medical Branch, UTMB hereinafter, to properly test and diagnose Movant with ailments that have been documented to be ongoing since January of 2017.

Movant has placed a considerable amount of sick calls to the Beto Unit infirmary, managed and cared for by UTMB. Symptoms are progressive and broad. As reported to Movant by medical staff, symptoms are indicative of:

- (1) Multiple Sclerosis;
- (2) Lupus;
- (3) Fibromyalgia;
- (4) Cancer;
- (5) Eschemea; amoung others.

Of these potential ailments, two are necessarily "time related" to proper treatment to prevent death. As of August 2, 2018, Movant has not had any testing outside a complete blood count, which, by medical staffs admissions, would not show types of cancer nor any type of eschemea. Yet, Movant has been consistently denied any further, more accurate testing and has even been "postponed" indefinitely for doctors visits that resulted in his having to start the ten (10) business day process over, to see a doctor.

Movant has been attempting to reach diagnosis, outside one request to not be removed from his housing around March of 2017 and sent on Medical chain, for several months. Movant is consistently told his ailments are "in his head" even without a proper test that could potentially save his life.

Recently, a couple nurses have taken notice of Movant's plith but are not in administrative positions to help. Kevin Moore, SPC and infirmary manager, Dr. Haque and Dr. Clayton, have done nothing to diagnose Movant and move to treatment of his illness. Movant is left to wonder his fate and is left to suffer his illness without regard to his safety, quality of life, or even his livelyhood.

One must consider that if someone who is potentially facing an illness that could result in death and he is not being checked when the medical staff he is attending is adequately equipped to test for such ailments immediately, then Movant could be facing a death penalty without due process. Nonetheless, Movant is a ward of the State and is Constitutionally allowed adequate medical care. Surely, this includes a diagnosis to any illness.

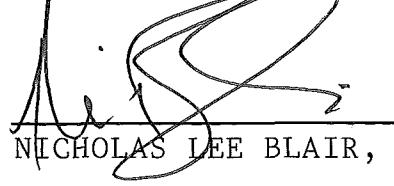
This is a denial of medical care, equal protection of the law, cruel and unusual punishment and affects the quality of life Movant is allowed to have even in prison.

Conclusion.

Movant, NICHOLAS LEE BLAIR, believes he has right to emergency injunctive relief to avoid possible death and proper treatment. Movant is not a medical expert but knows his body and knows he is not feeling normal. See affidavit enclosed. Movant respectfully requests that this Court provide the needed relief that could

save his life. This will result in a 42 U.S.C. § 1983. See administrative remedy exhausted. But Movant must first be alive in order to perform the action. Movant respectfully requests relief in any form the Court find necessary. Movant has provided Order for the Court's convienance.

Respectfully submitted,


NICHOLAS LEE BLAIR, Movant

AFFIDAVIT OF NICHOLAS LEE BLAIR

I, Nicholas Lee Blair, do declare the following is true and correct to the best of my ability and belief.

1. I have placed several sick calls to the infirmary at Beto Unit and have still not been tested for any illness that is detectable by the standards of medical care and treatment.

2. My symptoms include: masses on my throat, arm and abdomen - all on the left side; cold to the touch, even in 100 degree plus weather; difficulty breathing; extreme fatigue; unexplained headaches and chest pain; spots/"bugs" in direct line of sight as well as one single spot of light that shows up in field of vision intermittently despite 20/20 vision, "shaky" vision with strange flare ups; vibration sensation and shaking throughout body; feelings of extreme disassociation and close to losing consciousness; severe sweating; difficulty sleeping; severe tongue pain with inability to speak properly at times, among others.

3. I am in fear for my life and have no idea past the grievance process, which has done nothing, what to do.

4. My family has contacted OMBUDSMAN who forwarded the complaint to UTMB but this does not provide the help I need to make sure I am not dying.

5. I have been told several times it is in my head but how does one know that without testing beyond a CBC?

6. I am a sufferer of anxiety disorder but I have never felt these symptoms before.

7. I simply do not want to die. Especially if it can be detected and avoided.

8. I do not understand why I am not being tested and why it has gone on so long without such.

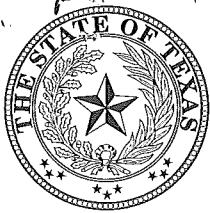
9. I have attempted to give all my symptoms to the doctors in prior visits but I am not allowed because it was not the problem put in the computer by the nurse and am directed to place another nurse sick call that causes a 10-15 business day lapse, if my appointments are not postponed indefinitely as before, but then I'm left to the whims of what the next nurse places on the computer.

10. I have been given various medications that have not worked and without ever being tested for the ailments the medication is to relieve.

11. I am constantly scared that I am dying and become so disassociated that I am not sure if I will lose consciousness.

I, Nicholas Lee Blair, do declare the foregoing to be true and correct to the best of my belief and knowledge.

Nicholas Lee Blair



OFFENDER STEP 1 GRIEVANCE FORM

Offender Name: Michael Blair TDCJ # 1941929
 Unit: Befo Housing Assignment: H-211-B
 Unit where incident occurred: Befo

Grievance #:	<u>2018116664</u>
Date Received:	<u>4/13/18</u>
Date Due:	<u>5/28/18</u>
Grievance Code:	<u>037</u>
Investigator ID #:	<u>12582</u>
Extension Date:	
Date Retd to Offender:	<u>5/21/18</u>

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Hague - Doctor When? 4-5-18
 What was their response? That I was not sick and it is all in my mind.
 What action was taken? None.

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

On April 5, 2018 at around 11:30 am, I spoke with Dr. Hague relating to my medical concerns. He abruptly dismissed my concerns as being "all in your head". My concerns related to abdominal pain to which I have around one decade of documented issues. Including a colostomy and appendectomy in 2013. I have diverticulitis and currently, I have many physical disturbances which refutes, any "all in your head" theory. I have blisters on my skin on the abdomen. Pains in my lower left abdomen, groin and oddly, neck area. I often wake up to my glands being swollen and pain and stiffness in my jaw. There is strange "vibrating" sensations in my legs and left arm that come and go. I have a nearly felt sensitivity to the cold. I also have bouts of severe nausea and diarrhea. I also have noticed odd spots in my rectal perity. I have been to medical consistently since Jan/Feb for the issues stated without so much as a CBC, X-ray, stool sample, etc. Outside the normal blood pressure check and temperature taking, with the exception of one "dip stick" test for a UTI, I have received absolutely NO tests that would adequately be used for diagnosis. Yet I have been given a litany of ailments that have been diagnosed by many nurses and a guess by Dr. Clayton who, prescribed an antibiotic. And to little avail. To tell someone who has physical abnormalities that it is "all in your head" is cruel and unusual by any standard. Not to mention a complete disregard to one's duty to provide adequate medical care. No one can determine

update Grievance, causing an abnormality without first testing. Considering to have had issues with digestion for sometime, I am aware that stool samples, CBC's, X-rays can determine a lot, or at least point to what is wrong. Existing Grievance # 20181668. I am a doctor but Grievance # 20181668 know, that repeatedly not even attempting to provide medical care is unreasonable for a medical professional. In the present situation it is unconstitutional. This has been going on for months and is now progressively getting worse. The process to see a doctor can take weeks and when you are blown off it can take months to be treated. This is cruel and unusual punishment.

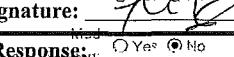
Housing: [REDACTED] Date Received: 04/13/2018
 Facility: BETO 1 (OB) Department: MEDICAL
 Summary: Unhappy with what the doctor said about his medical issues

Some kind of testing to find a diagnosis. Adequate medical care and not to be pushed aside for months by several nurses and two doctors.

Action Requested to resolve your complaint:

Interview: Yes No Interviewed: Yes No

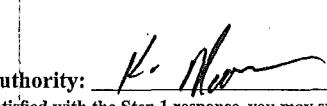
Date: 4-10-18

Offender Signature: 

Grievance Response: Yes No

Disposition: Review of your medical records shows you have a diagnosis of diverticular disease of intestine. On 4/6/18 you were seen by unit provider for complaint of cold, chills, feeling of numbness of face and wondering if it was due to your illness. Unit provider responded no, and that

Review of your medical records shows you have a diagnosis of diverticular disease of intestine. On 4/6/18 you were seen by unit provider for complaint of cold, chills, feeling of numbness of face and wondering if it was due to your illness. Unit provider responded no, and that there was no reasoning to connect to that. He noted you verbalized understanding. He provides a statement that says ?diagnostic testings are ordered as indicated based on the professional opinion of provider rendering care. This grievance is denied..


 Kevin Moore, SPM

MAY 14 2018

Date: 5/14/18

Signature Authority: 

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response.

State the reason for appeal on the Step 2 Form.

Add Codes Remove Selected Code

Returned because: *Resubmit this form when the corrections are made.

- 1. Grievable period has expired.
- 2. Submission in excess of 1 every 7 days. *
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments. *
- 5. No documented attempt at informal resolution. *
- 6. No requested relief is stated. *
- 7. Malicious use of vulgar, indecent, or physically threatening language. *
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # _____
- 10. Illegible/Incomprehensible. *
- 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 nd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3 rd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F



Texas Department of Criminal Justice
STEP 2 **OFFENDER**
GRIEVANCE FORM

Offender Name: Nicholas Blair TDCJ # 1941929
 Unit: Beto Housing Assignment: H-211-B
 Unit where incident occurred: Beto

OFFICE USE ONLY	
Grievance #:	<u>2018166664</u>
UGI Recd Date:	<u>5-30-18</u>
HQ Recd Date:	<u>JUN 6 - 2018</u>
Date Due:	<u>7-14</u>
Grievance Code:	<u>631</u>
Investigator ID#:	<u>I0352</u>
Extension Date:	

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

Mr. Kevin Moore responds to the neglect of Dr. Hague as an appropriate remedy. It does not matter the concern to why I was being seen. The point is I have physical manifestation, now worsening, and developing to compounding issues, and simply neglected by Dr. Hague. I was told I needed to be "Rested" by Dr. Clayton in January of this year if my symptoms persisted. They not only persist, they are worsening. I also requested to pay for my own medication, i.e. probiotics and orange extract, as I am very familiar with my condition, (Candida infestation) as I have been dealing with it for twelve years and was able to treat myself with the stated products. It is also a religious/spiritual belief of mine to be holistic and symbiotic with nature even in treatment of ailments. And personally paying for the products that are safe enough to give children, it would be no security issue nor burden to the State or TDCJ. And as Dr. Hague was eating his Greek yogurt (a probiotic) he said "No". "It is all in your head." I find it hard for him to be sure of that without even a CBC. The physical implications show otherwise. In one statement, Dr. Hague denied adequate medical care (diagnosis), deprived me of a good faith spiritual/religious right and

Made the attempt at making my condition my problem and fault.
 I put in to see Psyche, and although I'm known to have anxiety issues, Dobbins could not say it was clearly mentally affected and asked that I request testing to help decide. He stated that some of the issues don't sound "mental" at all. With no testing, no ability to treat myself, I am denied care
 This is cruel and unusual punishment.

Offender Signature: Re B D. Date: 5-27-18

Grievance Response:

In your Step 1 medical grievance, you stated you have been denied appropriate medical care for blotches on your skin, pain in your lower abdomen, groin, and neck. You are requesting to have testing done to find a diagnosis and receive adequate medical care for these issues.

The step 2 appellate review concurs with the response at Step 1. Further review shows you were seen by the unit Medical Director on 05/08/2018 for multiple complaints. You received orders for medication for your rash, as well as, antibiotics. You were also seen by Medical Director again on 05/29/2018 for these issues and received orders for body lotion and antibiotics. Though you and your healthcare providers may differ in opinion regarding your needs and the medical treatment rendered, these decisions are ultimately the responsibility of the facility providers. Documentation in the medical record indicates you have been afforded access to proper medical care in accordance with Correctional Managed Health Care Policy E-37.1.

You are advised to submit a Sick Call Request if you feel your condition has changed to warrant further evaluation.

STEP II MEDICAL GRIEVANCE PROGRAM
OFFICE OF PROFESSIONAL STANDARDS

TDCJ HEALTH SERVICES DIVISION

Offender Signature:

Date:

6/7/18

Grievance Response:

Date:

Signature Authority:

Returned because: *Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible.*
- 3. Originals not submitted.*
- 4. Inappropriate/Excessive attachments.*
- 5. Malicious use of vulgar, indecent, or physically threatening language.
- 6. Inappropriate.*

CGO Staff Signature:

Offender Signature:

Grievance Response:

Signature Authority:

Returned because: *Resubmit this form when corrections are made.

- 1. Grievable time period has expired.

I-128 Back (Revised 11-2010) Original*

- 3. Originals not submitted.*

OFFICE USE ONLY

Initial Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) Screened Improperly Submitted

Comments: _____

Date Returned to Offender: _____

2nd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) Screened Improperly Submitted

Comments: _____

Date Returned to Offender: _____

3rd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) Screened Improperly Submitted

Comments: _____

Date Returned to Offender: _____

Date CGO Recd: _____

Date CGO Recd: _____

Appendix G

(check one) Screened Improperly Submitted

Comments: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EX PARTE

NICHOLAS LEE BLAIR
TDCJ-CID, Beto Unit
TDCJ-ID No. 1941929

)
) CV No. _____
)
)

ORDER

~~be given~~
It is ORDERED by the Court, that emergency injunctive relief
be provided NICHOLAS LEE BLAIR, TDCJ No. 1941929, at the Beto
Unit in TDCJ-CID. The injunctive relief includes:

- (1) Emergency testing adequate to diagnose any illness that could cause death in relation to his symptoms, and the ailments described to him by medical staff,
- (2) Any adequate testing to detect cancer, eschemea, or other disease that has been attributed to his symptoms that would or could result in death without detection,
- (3) No delay in said actions and these injunctions take effect immediately upon receiving them.

It is hereby ORDERED by the Court the above stated be immediately adhered to by Beto Unit infirmary and University of Texas Medical Branch thereof.

Presiding Judge

United States District Court
for the Eastern District of Texas
Tyler Division

NICHOLAS LEE BLAIR
Beto Unit-TDCJ-CID
1391 F.M. 3328
Tennessee Colony, TX 75880



6:18cv394
RWS/JDL

Re: Emergency Injunctive Relief

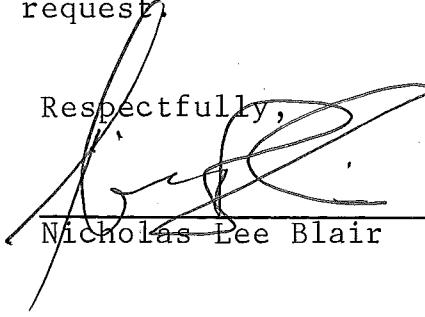
Dear Clerk:

Please find enclosed an Motion for Emergency Injunctive Relief, Order of the Court, Affidavit of Nicholas Lee Blair and grievances in relation to and proof of administrative exhaustion.

I request that you process and file these according to policy and law.

Thank you in advance for the request.

Respectfully,


Nicholas Lee Blair

Nicholas Blair 1441929
Jeff Way
1391 F.M. 3328
Tennessee Colony, TX. 75880

United States Dist. Court
~~North~~ Eastern District of Texas
Tyler Division
211 W. Ferguson St., Rm. 106
Tyler, TX. 75701



Legal Mail

25702-22093